

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ERIC L. ELLIS,

Plaintiff,

v.

CITY OF FORT WORTH, TEXAS, et al.

Defendants.

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Civil Action No. 4:23-CV-685-P (BJ)

**FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE AND NOTICE AND ORDER**

In this case, plaintiff Eric Lamar Ellis filed this case with a complaint and separate motion for leave to proceed *In Forma Pauperis* (ECF No. 2), filed on July 5, 2023. This case was referred to the undersigned magistrate judge pursuant to Special Order No. 3-251 on July 5, 2023.

FINDINGS AND CONCLUSIONS:

A. NATURE OF THE CASE

This case is a new civil action.

B. PARTIES

Eric Lamar Ellis is the plaintiff. Compl.1, ECF No. 1. He lists as defendants the City of Fort Worth, Officer Carlos Daniel Cervantes, and Office Matthew Anderson. *Id.* at 1.

C. LEGAL ANALYSIS

Before the Court is plaintiff Eric L. Ellis's Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 2), filed on July 5, 2023.

Whether to permit or deny an applicant to proceed *in forma pauperis* (IFP) is within the

sound discretion of the Court. 28 U.S.C. § 1915(a); *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988). Courts should make the determination of financial ability after considering whether payment of the filing fee will result in the plaintiff “suffering undue financial hardship.” *Prows*, 842 F.2d at 140. “This entails a review of other demands on individual plaintiffs’ financial resources, including whether the expenses are discretionary or mandatory.” *Id.*

In his financial affidavit, Plaintiff declares that he earns \$3,300 in monthly income. ECF No. 2 at 2. Plaintiff has listed two dependents. *Id.* at 3. Although Plaintiff does not reference a spouse, even assuming he is a part of a family of four, the applicable poverty guideline is \$30,000. At a monthly income of \$3,300, Plaintiff’s annual income of \$39,600 is far above the poverty level. Thus, based on the information in the application, Plaintiff has sufficient resources to pay the filing and administrative fees. To file a civil action in district court, payment of a filing fee of \$350 and an administrative fee of \$52 is required. *See* 28 U.S.C. § 1914(a) and District Court Miscellaneous Fee Schedule, note 14.

RECOMMENDATION

It is therefore **RECOMMENDED** that Plaintiff’s motion to proceed in forma pauperis (ECF No. 2), be **DENIED** by the district judge.

It is further **RECOMMENDED** that the district judge inform Plaintiff that the complaint will be subject to dismissal without further notice under Federal Rule of Civil Procedure 41(b), unless Plaintiff pays to the clerk of Court the filing and administrative fees of \$402.00 within seven (7) days after the district judge’s order.

NOTICE OF RIGHT TO OBJECT TO PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Under 28 U.S.C. § 636(b)(1), each party to this action has the right to serve and file specific written objections in the United States District Court to the United States Magistrate Judge's proposed findings, conclusions, and recommendation within fourteen (14) days after the party has been served with a copy of this document. The United States District Judge need only make a de novo determination of those portions of the United States Magistrate Judge's proposed findings, conclusions, and recommendation to which specific objection is timely made. *See* 28 U.S.C. § 636(b)(1). Failure to file by the date stated above a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual findings and legal conclusions accepted by the United States District Judge. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc), *superseded by statute* 28 U.S.C. § 636(b)(1) (extending the deadline to file objections from ten to fourteen days).

ORDER

Under 28 U.S.C. § 636, it is **ORDERED** that Plaintiff is granted until **October 2, 2023** to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions, and recommendation.

It is further **ORDERED** that the above-styled and numbered action, previously referred to the United States Magistrate Judge for findings, conclusions and recommendation, be and is hereby, **RETURNED** to the docket of the United States District Judge.

SIGNED September 18, 2023.


JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE